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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

KEYSSA, INC.,

Plaintiff,

v.

ESSENTIAL PRODUCTS, INC.,

Defendants.

CASE NO. 4:17-cv-05908-HSG

**JOINT STIPULATED PROTECTIVE  
ORDER**

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this case are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this action may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited

1 information or items that are entitled to confidential treatment under the applicable legal principles.  
2 The parties further acknowledge, as set forth in Section 14.5, below, that this Stipulated Protective  
3 Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets  
4 forth the procedures that must be followed and the standards that will be applied when a party seeks  
5 permission from the court to file material under seal.

## 6 **2. DEFINITIONS**

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
11 Civil Procedure 26(c), including, but not limited to: confidential or commercially sensitive technical,  
12 sales, marketing, personal or financial information of the producing Party or Non-Party, or  
13 information that the producing Party or Non-Party is under a legal obligation to maintain as  
14 confidential.

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
16 as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
18 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE.”

21 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
22 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
23 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
24 discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
26 action who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a  
27 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,  
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1 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's  
2 competitor.

3 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:  
4 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or  
5 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive  
6 means, including, but not limited to: (i) marketing, financial, sales, web traffic, research and  
7 development, or technical, data or information; (ii) commercially sensitive competitive information;  
8 (iii) information or data relating to future products not yet commercially released and/or strategic  
9 plans; (iv) trade secret, or other confidential research and development information; and (v)  
10 commercial agreements, settlement agreements, or settlement communications.

11 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely  
12 sensitive "Confidential Information or Items" representing computer code and associated comments  
13 and revision histories, formulas, engineering specifications, or schematics that define or otherwise  
14 describe in detail the algorithms or structure of software or hardware designs, disclosure of which to  
15 another Party or Non-Party would create a substantial risk of serious harm that could not be avoided  
16 by less restrictive means.

17 2.9 House Counsel: attorneys who are members in good standing of at least one state bar,  
18 who are employees of a Party to this action, and who have responsibility for managing this action.  
19 House Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.10 Close-proximity mmWave Wireless Connectivity: technology operating in the  
21 spectrum between 30GHz and 300GHz for transmit distances below 10 cm.

22 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal  
23 entity not named as a Party to this action.

24 2.12 Outside Counsel of Record: attorneys who are not employees of a Party to this action,  
25 but are retained to represent or advise a Party to this action and have appeared in this action on behalf  
26 of that party or are affiliated with a law firm which has appeared on behalf of that Party.

27 2.13 Party: any party to this action.  
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1           2.14    Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material  
2 in this action.

3           2.15    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
4 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
5 storing, or retrieving data in any form or medium, and professional jury or trial consultants) and their  
6 employees and subcontractors, who (1) have been retained by a Party or its Counsel to provide  
7 litigation support services with respect to this action, (2) are (including any employees and  
8 subcontractors) not a past or current employee of a Party or of a Party's competitor, and (3) at the  
9 time of retention, are not anticipated to become an employee of a Party or of a Party's competitor.

10          2.16    Protected Material: any Disclosure or Discovery Material that is designated as  
11 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or as  
12 "HIGHLY CONFIDENTIAL – SOURCE CODE."

13          2.17    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
14 Producing Party.

15          2.18    Technical Advisor: an employee of a Party to this action who has responsibility for  
16 providing technical consultation in this action.

17 **3.     SCOPE**

18          The protections conferred by this Stipulation and Order cover not only Protected Material (as  
19 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
20 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
21 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
22 However, the protections conferred by this Stipulation and Order do not cover the following  
23 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
24 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
25 publication not involving a violation of this Order, including becoming part of the public record  
26 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
27 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
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1 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
2 of Protected Material at trial shall be governed by a separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this action, the confidentiality obligations imposed by this  
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order  
6 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
7 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
8 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
9 limits for filing any motions or applications for extension of time pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
12 Non-Party that designates information or items for protection under this Order must take care to limit  
13 any such designation to specific material that qualifies under the appropriate standards. To the extent  
14 it is practical to do so, the Designating Party must designate for protection only those parts of  
15 material, documents, items, or oral or written communications that qualify – so that other portions  
16 of the material, documents, items, or communications for which protection is not warranted are not  
17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
19 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
20 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
21 other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated for  
23 protection do not qualify for protection at all or do not qualify for the level of protection initially  
24 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
25 mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
27 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
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1 Discovery Material that qualifies for protection under this Order must be clearly so designated before  
2 the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but  
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
6 affix the legend “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected  
8 material. If only a portion or portions of the material on a page qualifies for protection, the Producing  
9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
10 margins) and must specify, for each portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which material  
13 it would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL”, “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE  
20 CODE”) to each page that contains Protected Material. If only a portion or portions of the material  
21 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
22 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,  
23 the level of protection being asserted.

24 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
25 Designating Party when practical identify on the record, before the close of the deposition, hearing,  
26 or other proceeding, all protected testimony and specify the level of protection being asserted. When  
27 it is impractical to identify separately each portion of testimony that is entitled to protection and it  
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1 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
2 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
3 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
4 sought and to specify the level of protection being asserted. Only those portions of the testimony  
5 that are appropriately designated for protection within the 21 days shall be covered by the provisions  
6 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition  
7 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated  
8 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

10 Parties shall give the other Parties reasonable notice if they reasonably expect a deposition,  
11 hearing or other proceeding to include Protected Material so that the other Parties can ensure that  
12 only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
13 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
14 shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Transcripts  
16 containing Protected Material shall have an obvious legend on the title page that the transcript  
17 contains Protected Material, and the title page shall be followed by a list of all pages (including line  
18 numbers as appropriate) that have been designated as Protected Material and the level of protection  
19 being asserted by the Designating Party. The Designating Party shall inform the court reporter of  
20 these requirements. Any transcript that is prepared before the expiration of a 21-day period for  
21 designation shall be treated during that period as if it had been designated “HIGHLY  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the  
23 expiration of that period, the transcript shall be treated only as actually designated.

24 (c) for information produced in some form other than documentary and for any other  
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
26 containers in which the information or item is stored the legend “CONFIDENTIAL”, “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE  
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1 CODE.” If only a portion or portions of the information or item warrant protection, the Producing  
2 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of  
3 protection being asserted.

4 5.3 Inadvertent Failures to Designate. If at any time prior to the trial of this action, a  
5 Designating Party realizes that some portion[s] of Protected Material that the Designating Party  
6 previously produced without limitation should be designated as “CONFIDENTIAL”, “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE  
8 CODE,” the Producing Party may so designate by so apprising all parties in writing, and such  
9 designated portion[s] of the Protected Material will thereafter be treated as “CONFIDENTIAL”,  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL –  
11 SOURCE CODE” under the terms of this Order. If timely corrected, an inadvertent failure to  
12 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
13 to secure protection under this Order for such material. Upon timely correction of a designation, the  
14 Receiving Party must make reasonable efforts to assure that the material is treated in accordance  
15 with the provisions of this Order.

16 Inadvertent failure to designate by itself does not waive confidentiality. So long as the  
17 Designating Party has made reasonable efforts to designate its “CONFIDENTIAL”, “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE  
19 CODE” information appropriately, any production of information without it being designated as  
20 “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
21 CONFIDENTIAL – SOURCE CODE” will not thereby be deemed a waiver of any future claim of  
22 confidentiality concerning such information.

## 23 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at  
25 any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary  
26 to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
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1 disruption or delay of the action, a Party does not waive its right to challenge a confidentiality  
2 designation by electing not to mount a challenge promptly after the original designation is disclosed.

3         6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
4 by providing written notice of each designation it is challenging and describing the basis for each  
5 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
6 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
7 of the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must  
8 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
9 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party  
10 must explain the basis for its belief that the confidentiality designation was not proper and must give  
11 the Designating Party an opportunity to review the designated material, to reconsider the  
12 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
13 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
14 has engaged in this meet and confer process first or establishes that the Designating Party is unwilling  
15 to participate in the meet and confer process in a timely manner.

16         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
17 intervention, the Challenging Party shall file and serve a motion to re-designate or de-designate under  
18 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of  
19 the initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer  
20 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied  
21 by a competent declaration affirming that the movant has complied with the meet and confer  
22 requirements imposed in the preceding paragraph. Any motion brought pursuant to this provision  
23 must be accompanied by a competent declaration affirming that the movant has complied with the  
24 meet and confer requirements imposed by the preceding paragraph.

25         The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
26 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
27 expenses and burdens on other parties) may expose the Challenging Party to sanctions. All Parties  
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1 shall continue to afford the material in question the level of protection to which it is entitled under  
2 the Designating Party's designation until the court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this action, and shall not use Protected Material for any business  
7 purpose, in connection with any other legal proceeding, or directly or indirectly for any other purpose  
8 whatsoever. Such Protected Material may be disclosed only to the categories of persons and under  
9 the conditions described in this Order.<sup>1</sup> When the action has been terminated, a Receiving Party  
10 must comply with the provisions of section 15 below (FINAL DISPOSITION). Protected Material  
11 must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures  
12 that access is limited to the persons authorized under this Order. Protected Material shall not be  
13 copied or otherwise reproduced by a Receiving Party, except for transmission to qualified recipients,  
14 without the written permission of the Producing Party or by further order of the Court.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
16 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
17 information or item designated "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
20 information for this action;

21 (b) up to two House Counsel of the Receiving Party with responsibility for managing  
22 this action, who are members of at least one state bar in good standing, to whom disclosure is  
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24 \_\_\_\_\_  
25 <sup>1</sup> In the event a Non-Party witness is authorized to receive Protected Material that is to be used  
26 during his/her deposition but is represented by an attorney not authorized under this Order to receive  
27 such Protected Material, the attorney must provide prior to commencement of the deposition an  
28 executed "Acknowledgment and Agreement to Be Bound" in the form attached hereto as Exhibit A.  
In the event such attorney declines to sign the "Acknowledgment and Agreement to Be Bound" prior  
to the examination, the Parties, by their attorneys, shall jointly seek a protective order from the Court  
prohibiting the attorney from disclosing Protected Material in order for the deposition to proceed.

1 reasonably necessary for this action and who have signed the “Acknowledgment and Agreement to  
2 Be Bound” (Exhibit A);

3 (c) the Receiving Party’s Technical Advisor, to whom disclosure is reasonably  
4 necessary for this action, and who has signed the “Acknowledgment and Agreement to Be Bound”  
5 (Exhibit A);

6 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
7 reasonably necessary for this action and who have signed the “Acknowledgment and Agreement to  
8 Be Bound” (Exhibit A);

9 (e) the Court and its personnel;

10 (f) court reporters, videographers, and their staff, and Professional Vendors to whom  
11 disclosure is reasonably necessary for this action and who have signed the “Acknowledgment and  
12 Agreement to Be Bound” (Exhibit A);

13 (g) during their depositions, witnesses in the action to whom disclosure is reasonably  
14 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
15 unless the Designating Party objects to such disclosure or except as otherwise ordered by the Court.  
16 Before making such a disclosure, Receiving Party must provide notice sufficient to allow the  
17 Designating Party to object. Pages of transcribed deposition testimony or exhibits to depositions that  
18 reveal Protected Material must be separately bound by the court reporter and may not be disclosed  
19 to anyone except as permitted under this Stipulated Protective Order.

20 (h) Independent litigation-support contractors engaged by counsel of record for the  
21 parties, to the extent reasonably necessary to assist counsel in connection with this action, including  
22 but not limited to: (i) legal translators retained to translate in connection with this action; (ii)  
23 independent stenographic reporters and videographers retained to record and transcribe testimony in  
24 connection with this action; (iii) graphics or design service providers retained to prepare  
25 demonstrative or other exhibits for deposition, trial, or other court proceedings in the action; (iv)  
26 non-technical jury or trial consulting service providers, not including mock jurors; (v) electronic  
27 discovery vendors retained to assist with the organization and management of electronic discovery;

1 and (vi) private investigators, provided that such persons or entities (1) are (including any employees  
2 and subcontractors) not a past or current employee of the parties or the parties' competitor, and (2)  
3 at the time of retention, are not anticipated to become an employee of a party or of a parties'  
4 competitor, and have first been given a copy of this Order and either have executed the  
5 Confidentiality Agreement attached hereto as Attachment A, or are contractually bound to adhere to  
6 the terms of this Order;

7 (i) the author or recipient of a document containing the information or a custodian or  
8 other person who otherwise possessed or knew the information.

9 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
10 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
11 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY  
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

13 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
14 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
15 information for this action;

16 (b) the Receiving Party's Experts (1) to whom disclosure is reasonably necessary for  
17 this action, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),  
18 (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed, and (4) provided  
19 such Experts are not involved in competitive decision-making, as defined in paragraph 8;

20 (c) the Court and its personnel;

21 (d) court reporters, videographers, and their staff, and Professional Vendors to whom  
22 disclosure is reasonably necessary for this action and who have signed the "Acknowledgment and  
23 Agreement to Be Bound" (Exhibit A);

24 (e) Independent litigation-support contractors engaged by counsel of record for the  
25 parties, to the extent reasonably necessary to assist counsel in connection with this action, including  
26 but not limited to: (i) legal translators retained to translate in connection with this action; (ii)  
27 independent stenographic reporters and videographers retained to record and transcribe testimony in  
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1 connection with this action; (iii) graphics or design service providers retained to prepare  
2 demonstrative or other exhibits for deposition, trial, or other court proceedings in the action; (iv)  
3 non-technical jury or trial consulting service providers, not including mock jurors; (v) electronic  
4 discovery vendors retained to assist with the organization and management of electronic discovery;  
5 and (vi) private investigators, provided that such persons or entities have first been given a copy of  
6 this Order and either have executed the Confidentiality Agreement attached hereto as Attachment A,  
7 and a signed copy has been provided to the producing party, or are contractually bound to adhere to  
8 the terms of this Order;

9 (f) the author or recipient of a document containing the information or a custodian or  
10 other person who otherwise possessed or knew the information.

11 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
13 CODE” Information or Items to Experts.

14 (a) Unless otherwise ordered by the Court or agreed to in writing by the Designating  
15 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
16 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) or 9(b)(ii) first must  
18 make a written request to the Designating Party<sup>2</sup> that (1) identifies the general categories of  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
20 SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert,  
21 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)  
22 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
23 identifies each person or entity from whom the Expert has received compensation or funding for  
24 \_\_\_\_\_

25 <sup>2</sup> For a Designating Party that is a Non-Party, experts previously disclosed and approved prior to  
26 the Non-Party’s production of any information or item that has been designated “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
28 CODE” need not be disclosed to said Non-Party unless such Non-Party requests such information  
prior to the production of any Protected Material. Moreover, unless otherwise requested by the Non-  
Party, subsequently disclosed experts need not be disclosed to the Non-Party before that Non-Party’s  
Protected Material may be disclosed thereto.

1 work in his or her areas of expertise or to whom the expert has provided professional services,  
2 including in connection with a litigation, at any time during the preceding five years,<sup>3</sup> and (6)  
3 identifies (by name and number of the case, filing date, and location of court) any litigation in  
4 connection with which the Expert has offered expert testimony, including through a declaration,  
5 report, or testimony at a deposition or trial, during the preceding five years.<sup>4</sup>

6 (b) A Party that makes a request and provides the information specified in the  
7 preceding respective paragraphs may disclose the subject Protected Material to the identified Expert  
8 unless, within seven (7) days of delivering the request, the Party receives a written objection from  
9 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with the  
11 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
12 within seven (7) days of the written objection. If no agreement is reached, the Party seeking to make  
13 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance  
14 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
15 motion must describe the circumstances with specificity, set forth in detail the reasons why the  
16 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would  
17 entail, and suggest any additional means that could be used to reduce that risk. In addition, any such  
18 motion must be accompanied by a competent declaration describing the parties' efforts to resolve  
19 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
20 setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

21 (d) A Party who has not previously objected to disclosure of Protected Material to an  
22 Expert or whose objection has been resolved with respect to previously produced Protected Material

23 \_\_\_\_\_  
24 <sup>3</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-  
25 party, then the Expert should provide whatever information the Expert believes can be disclosed  
26 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall  
27 be available to meet and confer with the Designating Party regarding any such engagement.

28 <sup>4</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain  
limited work prior to the termination of the litigation that could foreseeably result in an improper use  
of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
"HIGHLY CONFIDENTIAL – SOURCE CODE" information.

1 shall not be precluded from raising an objection to an Expert at a later time with respect to Protected  
2 Material that is produced after the time for objecting to such Expert has expired or if new information  
3 about that Expert is disclosed or discovered. Any such objection shall be handled in accordance with  
4 the provisions set forth above.

5 **8. PROSECUTION AND ACQUISITION BAR**

6 Absent written consent from the Producing Party, any individual who receives access to and  
7 accesses “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
8 CONFIDENTIAL – SOURCE CODE” information shall not be involved in the prosecution of  
9 patents or patent applications relating to Close-proximity mmWave Wireless Connectivity  
10 technology. For purposes of this paragraph, “prosecution” includes any activity related to the  
11 competitive business decisions involving (i) the preparation or prosecution (for any person or entity)  
12 of patent applications, including reexamination and reissue applications or (ii) directly or indirectly  
13 participating, drafting, amending, advising, or otherwise affecting the scope or maintenance of patent  
14 claims.<sup>5</sup> To avoid any doubt, “prosecution” as used in this paragraph does not include representing  
15 a party challenging a patent before a domestic or foreign agency (including, but not limited to, a  
16 reissue protest, ex parte reexamination, inter partes reexamination, inter partes review, post grant  
17 review, or covered business method review). This Prosecution Bar shall begin when the affected  
18 individual first accesses “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
19 “HIGHLY CONFIDENTIAL – SOURCE CODE” information of the Producing Party and shall end  
20 two (2) years after final termination of this action.

21 Absent written consent from the Producing Party, any individual who receives access to and  
22 accesses “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
23 CONFIDENTIAL – SOURCE CODE” information shall not be involved in activity related to: (i)  
24 the acquisition of patents or patent applications (for any person or entity) relating to Close-proximity  
25 mmWave Wireless Connectivity technology; or (ii) advising or counseling clients regarding the  
26 same. This Acquisition Bar shall begin when the affected individual first accesses “HIGHLY  
27 \_\_\_\_\_

28 <sup>5</sup> Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information and shall end two (2) years after final disposition of this action as provided herein.

**9. SOURCE CODE**

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret source code or algorithms. This material may include, among other things, technical design documentation that comprises, includes, or substantially discloses source code or algorithms.

(b) Unless otherwise ordered by the Court or permitted in writing by the Designating Party, Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall only be disclosed to:

(i) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this action;

(ii) up to three Experts of the Receiving Party (a) to whom disclosure is reasonably necessary for this action, (b) who have signed the “Acknowledgement an Agreement to Be Bound” (Exhibit A), (c) as to whom the procedures set forth in Paragraph 7.4 have been followed, and (d) provided such Experts are not involved in competitive decision-making, as defined in paragraph 8;

(iii) the Court and its personnel;

(iv) stenographic reporters, videographers and their respective staff who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A) and are transcribing or videotaping a deposition wherein “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items are being discussed, provided that such reporters and videographers shall not retain or be given copies of any portions of the source code, which if used during a deposition, will not be attached as an exhibit to the transcript but instead shall be identified only by its production numbers;



1 (v) while testifying at deposition or trial in this action only: (a) any current or former  
2 officer, director or employee of the Producing Party or original source of the information; (b) any  
3 person designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the  
4 Federal Rules of Civil Procedure; and/or (c) any person who authored, previously received (other  
5 than in connection with this action), or was directly involved in creating, modifying, or editing the  
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items, as evident from its face or  
7 reasonably certain in view of other testimony or evidence.

8 Persons authorized to view “HIGHLY CONFIDENTIAL – SOURCE CODE” Information  
9 or Items pursuant to this sub-paragraph shall not retain or be given copies of the “HIGHLY  
10 CONFIDENTIAL – SOURCE CODE” Information or Items except while so testifying. Only printed  
11 copies of the Source Code will be provided to testifying witnesses during their testimony.

12 (c) Any source code produced in discovery shall be made available for inspection, in a  
13 format allowing it to be reasonably reviewed and searched, during normal business hours or at other  
14 mutually agreeable times, at a mutually agreed upon office of the Producing Party’s Counsel or  
15 another mutually agreed upon location. Any such location shall be within the United States. The  
16 source code shall be made available for inspection on a secured computer in a secured, locked room  
17 without Internet access or network access to other computers, and the Receiving Party shall not copy,  
18 remove, or otherwise transfer any portion of the source code onto any recordable media or recordable  
19 device. The secured computer shall have disk encryption and be password protected. Use or  
20 possession of any input/output device (e.g., USB memory stick, mobile phone or tablet, camera or  
21 any camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can  
22 access the Internet or any other network or external system, etc.) is prohibited while accessing the  
23 computer containing the source code. All persons entering the locked room containing the source  
24 code must agree to submit to reasonable security measures to ensure they are not carrying any  
25 prohibited items before they will be given access to the locked room. The computer containing source  
26 code will be made available for inspection during regular business hours, upon reasonable notice to  
27 the producing party, which shall not be less than 3 business days in advance of the requested  
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1 inspection. The Producing Party may visually monitor the activities of the Receiving Party's  
2 representatives during any source code review, but only to ensure that there is no unauthorized  
3 recording, copying, or transmission of the source code.

4 (d) No person shall copy, e-mail, transmit, upload, download, print, photograph or  
5 otherwise duplicate any portion of the designated "HIGHLY CONFIDENTIAL – SOURCE CODE"  
6 material, except the Receiving Party may request paper copies of limited portions of source code that  
7 are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
8 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the  
9 source code other than electronically as set forth in paragraph (c) in the first instance. Such paper  
10 copies shall not consist of a continuous block of source code that is longer than 20 pages or more  
11 than 500 pages of source code in total, each in twelve (12)-point font, without prior written approval  
12 by the Producing Party. Within 5 business days or such additional time as necessary due to volume  
13 requested, the Producing Party will provide the requested material on watermarked or colored paper  
14 bearing Bates numbers and the legend "HIGHLY CONFIDENTIAL - SOURCE CODE" unless  
15 objected to as discussed below. At the inspecting Party's request, up to two additional sets (or  
16 subsets) of printed source code may be requested and provided by the Producing Party in a timely  
17 fashion. Even if within the limits described, the Producing Party shall provide all such source code  
18 in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL – SOURCE  
19 CODE." The Producing Party may challenge the amount of source code requested in hard copy form  
20 pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the  
21 Producing Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for  
22 purposes of dispute resolution. Contested printouts do not need to be produced to the Receiving  
23 Party until the matter is resolved by the Court.

24 Any paper copies designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" shall be  
25 stored or viewed only at: (i) the offices of Outside Counsel of Record for the Receiving Party, (ii)  
26 the offices of outside Experts who have been approved to access Source Code; (iii) the site where  
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1 any deposition is taken; (iv) the Court; or (v) any intermediate location necessary to transport the  
2 information to a hearing, trial or deposition.

3 (e) The Receiving Party shall maintain a log of any individual who has inspected any  
4 portion of the source code in electronic or paper form. The Producing Party shall be entitled to a  
5 copy of the log. The Receiving Party also: (i) shall maintain all paper copies of any printed portions  
6 of the source code in a secured, locked area located in the United States and under the direct control  
7 of counsel responsible for maintaining the security and confidentiality of the designated materials;  
8 (ii) shall not view the paper copies in a location where they could be viewed by persons other than  
9 those described as authorized to view “HIGHLY CONFIDENTIAL – SOURCE CODE” information  
10 in paragraph 9(b); (iii) shall not create any electronic or other images of the paper copies and shall  
11 not convert any of the information contained in the paper copies into any electronic format; (iv) shall  
12 not make additional paper copies of the source code; (v) shall not create any electronic or other  
13 images of the paper copies of the source code; (vi) shall not include any description of the source  
14 code in any materials disclosed to a third party, including a legal filing, without Defendants’  
15 prior, written consent or a court order authorizing such disclosure; (vii) if source code materials  
16 are utilized during a deposition or trial, it will be retrieved by the party utilizing the material at  
17 the end of the day, and shall in no circumstances be given or left with the court reporter or any  
18 other person; (viii) shall, following each inspection (unless otherwise agreed to in advance by the  
19 parties in writing), remove all notes, documents, and all other materials from the room that may  
20 contain work product and/or attorney-client privileged information; (ix) shall immediately notify  
21 via email counsel for the disclosing party if the source code is lost, stolen, or otherwise  
22 compromised, along with details of the event, and make all possible efforts to retrieve the source  
23 code; and (x) within thirty (30) days of final resolution of this matter, including through the  
24 exhaustion of any appeals, shall return any paper copies of the source code to Defendants’  
25 counsel or certify their secure destruction.

26 (f) The Receiving Party’s Outside Counsel of Record and/or Expert shall be entitled to  
27 take notes relating to the source code but may not copy any portion of the source code into the  
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1 notes. No copies of all or any portion of the source code may leave the room in which the source  
2 code is inspected except as otherwise provided herein. Further, no other written or electronic record  
3 of the source code is permitted except as otherwise provided herein.

4 (g) A list of names of persons who will view the source code will be provided to the  
5 producing party in conjunction with any written (including email) notice requesting inspection. The  
6 Receiving Party shall maintain a daily log of the names of persons who enter the locked room to  
7 view the source code and when they enter and depart. The Producing Party shall be entitled to a  
8 copy of the log.

9 (h) The Receiving Party's outside counsel shall maintain a log of all copies of the source  
10 code (received from a Producing Party) that are delivered by the Receiving Party to any person. The  
11 log shall include the names of the recipients and reviewers of copies and locations where the copies  
12 are stored. Upon request by the Producing Party, the Receiving Party shall provide reasonable  
13 assurances and/or descriptions of the security measures employed by the Receiving Party and/or  
14 person that receives a copy of any portion of the source code.

15 (i) Except as provided in this paragraph, the Receiving Party may not create electronic  
16 images, or any other images, of the source code from the paper copy for use on a computer (e.g.,  
17 may not scan the source code to a PDF, or photograph the code). The Receiving Party may create  
18 an electronic copy or image of limited excerpts of source code only to the extent necessary in a  
19 pleading, exhibit, expert report, discovery document, deposition transcript, other Court document, or  
20 any drafts of these documents ("SOURCE CODE DOCUMENTS"). The Receiving Party shall only  
21 include such excerpts as are reasonably necessary for the purposes for which such part of the Source  
22 Code is used. Images or copies of Source Code shall not be included in correspondence between the  
23 parties (references to production numbers shall be used instead) and shall be omitted from pleadings  
24 and other papers except to the extent permitted herein. The Receiving Party may create an electronic  
25 image of a selected portion of the Source Code only when the electronic file containing such image  
26 has been encrypted using commercially reasonable encryption software including password  
27 protection. The communication and/or disclosure of electronic files containing any portion of source  
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code shall at all times be limited to individuals who are authorized to see source code under the provisions of this Protective Order. Additionally, all electronic copies must be labeled “HIGHLY CONFIDENTIAL - SOURCE CODE.”

(j) To the extent portions of source code are quoted in a SOURCE CODE DOCUMENT, either (1) the entire document will be stamped and treated as HIGHLY CONFIDENTIAL- SOURCE CODE or (2) those pages containing quoted Source Code will be separately bound, and stamped and treated as HIGHLY CONFIDENTIAL - SOURCE CODE.

#### **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –SOURCE CODE” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.<sup>6</sup>

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear

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<sup>6</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 the burden and expense of seeking protection in that court of its confidential material – and nothing  
2 in these provisions should be construed as authorizing or encouraging a Receiving Party in this action  
3 to disobey a lawful directive from another court.

4 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
5 **THIS ACTION**

6 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
7 action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
8 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced  
9 by Non-Parties in connection with this action is protected by the remedies and relief provided by this  
10 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
11 additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
13 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
14 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party that some  
16 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order  
18 in this action, the relevant discovery request(s), and a reasonably specific description of the  
19 information requested; and

20 (3) make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
22 days of receiving the notice and accompanying information, the Receiving Party may produce the  
23 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely  
24 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
25 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
26 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
27 seeking protection in this court of its Protected Material.

1 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,  
4 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
7 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
8 Be Bound” that is attached hereto as Exhibit A.

9 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain produced material is  
12 subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those  
13 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
14 whatever procedure may be established in an e-discovery order that provides for production without  
15 prior privilege review. If information is produced in discovery that is subject to a claim of privilege  
16 or of protection as trial-preparation material, the party making the claim may notify any party that  
17 received the information of the claim and the basis for it. After being notified, a party must promptly  
18 return or destroy the specified information and any copies it has and may not sequester, use or  
19 disclose the information until the claim is resolved. This includes a restriction against presenting the  
20 information to the court for a determination of the claim. Pursuant to Federal Rule of Evidence  
21 502(d) and (e), the production of a privileged or work-product-protected document is not a waiver  
22 of privilege or protection from discovery in this case or in any other federal or state proceeding. For  
23 example, the mere production of privileged or work-product-protected documents in this case as part  
24 of a mass production is not itself a waiver in this case or any other federal or state proceeding.

25 **14. MISCELLANEOUS**

26 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
27 its modification by agreement with other Parties or by applying to the Court if such agreement cannot  
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1 be reached. Furthermore, without application to the Court, any party that is a beneficiary of the  
2 protections of this Order may enter a written agreement releasing any other party hereto from one or  
3 more requirements of this Order even if the conduct subject to the release would otherwise violate  
4 the terms herein.

5 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
6 no Party waives any right it otherwise would have to object to disclosing or producing any  
7 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
8 Party waives any right to object on any ground to use in evidence of any of the material covered by  
9 this Protective Order.

10 14.3 No Agreement Concerning Discoverability. The identification or agreed upon  
11 treatment of certain types of Disclosure and Discovery Material does not reflect agreement by the  
12 Parties that the disclosure of such categories of Disclosure and Discovery Material is required or  
13 appropriate in this action. The Parties reserve the right to argue that any particular category of  
14 Disclosure and Discovery Material should not be produced.

15 14.4 Export Control. Disclosure of Protected Material shall be subject to all applicable  
16 laws and regulations relating to the export of technical data contained in such Protected Material,  
17 including the release of such technical data to foreign persons or nationals in the United States or  
18 elsewhere. Each party receiving Protected Information shall comply with all applicable export  
19 control statutes and regulations. *See, e.g.,* 15 CFR 734.2(b). No Protected Information may leave  
20 the territorial boundaries of the United States of America or be made available to any foreign national  
21 who is not (i) lawfully admitted for permanent residence in the United States or (ii) identified as a  
22 protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Without  
23 limitation, this prohibition extends to Protected Information (including copies) in physical and  
24 electronic form. The viewing of Protected Information through electronic means outside the  
25 territorial limits of the United States of America is similarly prohibited. Notwithstanding this  
26 prohibition, Protected Information, exclusive of material designated RESTRICTED  
27 CONFIDENTIAL - SOURCE CODE, and to the extent otherwise permitted by law, may be taken  
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1 outside the territorial limits of the United States if it is reasonably necessary for a deposition taken  
2 in a foreign country. The restrictions contained within this paragraph may be amended through the  
3 consent of the producing Party to the extent that such agreed to procedures conform with applicable  
4 export control laws and regulations.

5       14.5 Filing Protected Material. Without written permission from the Designating Party or  
6 a Court order secured after appropriate notice to all interested persons, a Party may not file in the  
7 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
8 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal  
9 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
10 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected  
11 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
12 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
13 Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in the  
14 public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

15       14.6 Use of Protected Material at Trial. Any use of Protected Material at trial shall be  
16 governed by a separate agreement or order, which the Parties shall submit to and/or request from the  
17 Court as part of their pre-trial submissions.

18       14.7 No Limitation on Legal Representation. Nothing in this Order shall preclude or impede  
19 Outside Counsel of Record's ability to communicate with or advise their client in connection with  
20 this action based on such counsel's review and evaluation of Protected Material, provided however  
21 that such communications or advice shall not disclose or reveal the substance or content of any  
22 Protected Material other than as permitted under this Order.

23       14.8 Violations. If any Party violates the limitations on the use of Protected Material as  
24 described above, the Party violating this Order may be subject to sanctions, or any other remedies as  
25 appropriate, as ordered by the Court. In the event motion practice is required to enforce the terms of  
26 this Order, the prevailing party on such a motion may be awarded costs, expenses, and fees, including  
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1 attorney or other professional fees, incurred in connection with the discovery of the violation and the  
2 preparation, filing, and arguing of the motion or any other proceedings resulting from the violation.

3 14.9 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of this  
4 Stipulated Protective Order as of the date counsel for such party executes this Stipulated Protective  
5 Order, even if prior to entry of this Order by the Court.

6 14.10 The United States District Court for the Northern District of California is responsible  
7 for the interpretation and enforcement of this Protective Order. After termination of this action, the  
8 provisions of this Protective Order shall continue to be binding except with respect to that Protected  
9 Information that become a matter of public record or fall within the scope of material described in  
10 Section 3(a) and (b) of this Protective Order. This Court retains and shall have continuing  
11 jurisdiction over the parties and recipients of the Protected Information for enforcement of the  
12 provision of this Protective Order following termination of this action. All disputes concerning  
13 Protected Information produced under the protection of this Protective Order shall be resolved by  
14 the United States District Court for the Northern District of California.

15 **15. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
17 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
18 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
19 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
20 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
21 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
22 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
23 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
24 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
25 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
26 pleadings, motion papers and trial briefs (including all supporting and opposing papers and exhibits  
27 thereto), written discovery requests and responses (and exhibits thereto), deposition transcripts (and  
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1 exhibits thereto), trial transcripts, hearing transcripts, exhibits offered or introduced into evidence at  
2 any hearing or trial, and attorney work product, even if such materials contain Protected Material,  
3 for archival purposes only. Any such archival copies that contain or constitute Protected Material  
4 remain subject to this Protective Order as set forth in Section 4 (DURATION).

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6  
7 Dated: March 6, 2019

Respectfully submitted,

8 QUINN EMANUEL URQUHART & SULLIVAN, LLP

9  
10 By: /s/ David Eiseman

11 David Eiseman  
Charlie K. Verhoeven  
Sam Stake

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18 *Attorneys for Plaintiff Keyssa, Inc.*  
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1 Dated: March 6, 2019

Respectfully submitted,

2 KEKER, VAN NEST & PETERS LLP

3  
4 By: /s/ Ryan K. Wong

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Leo L. Lam

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10 Facsimile: (415) 397-7188

11 Attorneys for Defendant Essential Products, Inc.

**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: March 6, 2019

/s/ David Eiseman

David Eiseman

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 7, 2019

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Hon. Haywood S. Gilliam, Jr.  
United States District Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued  
by the United States District Court for the Northern District of California on [date] in the case of  
*Keyssa, Inc. v. Essential Products, Inc.*, Case No. 4:17-cv-05908-HSG. I agree to comply with and  
to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is subject to  
this Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern  
District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even  
if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number]  
as my California agent for service of process in connection with this action or any proceedings related  
to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]